CONTRACT FOR
Software Support and Professional Services
Blackford County, Indiana
2004

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Blackford County, Indiana
2004
ARC #04-IN-184-BLK-00-40

Appraisal Research
CORPORATION

THIS CONTRACT is entered into on this _20_ day of _December_ ,
2004 by and between the **Blackford Commissioners** representing the **Blackford County Assessor**, State of Indiana, hereinafter referred to as *Client*;

and

Appraisal Research Corporation, an Ohio Corporation that is authorized to do business in the State of Indiana and whose permanent office is located at 101 East Sandusky Street, Findlay, Ohio 45840, hereinafter referred to as *Company*.

WITNESSETH

WHEREAS the Client has purchased and implemented the Company's software product listed in Exhibit A attached hereto, hereinafter referred to as *Software Product*.

WHEREAS the Client is in need of technical support services for the said Software Product.

WHEREAS the Company is the sole provider of technical support for the Software Product, and the Company agrees to provide technical support services for the Software Product.

WHEREAS the Client desires to utilize said services.

NOW, THEREFORE, it is agreed between the Client and the Company that the Company shall provide the professional services contained in this contract and in the "Services to be Performed" attached hereto as Exhibit B.

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1.   **CONTRACT DOCUMENTS**

1.1   This agreement and its exhibits hereto comprise the contract documents.

2.   **OVERVIEW**

2.1   This agreement sets forth the terms and conditions under which the Client has retained the Company to provide professional services for the Software Product.

2.2   The Company has the right to control and direct the means, manner and method by which the services contained in the agreement shall be performed.

2.3   The Client shall be responsible for all hardware and system software including the installation of Microsoft Windows operating system.

2.4   The Company's timely performance of its obligations under this agreement depends on the Client's timely performance of the Client's responsibilities under this agreement.

2.5   The Company's performance of this agreement is conditioned upon the nonoccurrence of a strike, fire, flood, disaster, rationing, governmental intervention or other cause beyond the Company's reasonable control which materially increases the cost or difficulty of the Company's performance.

3.   **TERM OF AGREEMENT**

3.1   This agreement shall become effective on the date indicated in the introductory paragraph of the agreement, and shall remain in effect until either party notifies the other of termination of this agreement.

3.2   Either party may terminate the agreement by giving written notice to the other party by certified mail sixty (60) days prior to anniversary date of the contract.   *Oct 22, 2007*

4.   **COMPENSATION AND PAYMENT**

4.1   As compensation for the Company's performance of its obligations under this agreement, the Client agrees to pay to the Company a fee of four

thousand dollars ($4,000) annually, beginning thirty (30) days from the signing of this agreement.

4.2   The compensation for the Company's performance of its obligation under this agreement in years subsequent to year one of the agreement, shall be determined by the Company's prevailing rate.

4.3   Payment to the Company shall be made in twelve (12) monthly installments of three hundred thirty-three dollars and thirty-three cents ($333.33).

4.4   All bills properly rendered shall be due within thirty (30) days of the date of the invoice. Any bill unpaid after thirty (30) days shall be subject to a one percent (1%) per month interest rate for each month, or part thereof, that the bill remains unpaid.

4.5   If the Client requires the Company to provide additional services not provided in this agreement, the Company shall charge the Client the Company's prevailing rate for said service. Additional services would include quality control of imported date, report creation, hardware changes, training, and other services.

5.   DATA CONVERSION

5.1   The Company shall provide an electronic conversion of the Client's current CAMA data into the Company's Software Product. This conversion shall be to the extent allowed by the constraints of the two software systems involved. A fee of seven thousand eight hundred dollars ($7,800) shall be paid for this service.

6.   INDEPENDENT CONTRACTOR

6.1   The Company is an independent contractor and has the right to perform services for others during the term of this agreement.

6.2   The agreement does not nor is it intended to create an employer-employee relationship or principal-agent relationship.

6.3   The Company shall assign professionally qualified personnel sufficient to ensure the satisfactory completion of the project.

6.4   The Company's services, facilities, and employment opportunities shall be available to all persons without regard to race, color, sex, creed, age, religion, or national origin.

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6.5   The services required by this agreement shall be performed by the Company, and the Client shall not be required to hire, supervise or pay any assistants to help the Company.

6.6   The Company is responsible for paying all ordinary and necessary expenses of its staff.

6.7   The Company's personnel shall not be considered, in any manner, employees of the Client, or have any rights to any benefits that the Client grants its personnel.

6.8   The Company shall not be required to devote full-time to the performance of the services required by this agreement.

6.9   The Company shall not be considered or deemed to be an agent, employee, joint venture or partner of the Client.

6.10   The Company shall have no authority to contract for or bind the Client in any manner, and shall not represent itself as an agent of the Client, or as otherwise authorized to act for or on behalf of the Client.

7. LIABILITY

7.1   The Company shall carry public liability and workmen's compensation insurance.

7.2   The total liability of the Company for any and all injuries, claims, losses, expenses or damages whatsoever arising out of, or in any way related, to this agreement shall not exceed the total compensation received by the Company under this agreement.

7.3   Any claim arising out of or related to this agreement must be brought no later than one (1) year after it has accrued, or one (1) year from the date that such defect to this agreement is discovered.

8. ENTIRE AGREEMENT

8.1   The agreement contains the complete and entire agreement between the parties.

8.2   There shall be no departure from the terms of this agreement or no change or alterations of this agreement without the express written consent of the parties.

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9. PROTECTION OF SOFTWARE PRODUCT

9.1 The Client agrees and acknowledges that the Software Product, along with any modifications, upgrades or enhancements, and all copies thereof are the sole property of the Company.

9.2 Nothing in this agreement shall be interpreted as granting the Client any right, title or interest in the Software Product.

9.3 The Client agrees not to divulge any system or operating procedures, or any material or information that is noted as proprietary.

9.4 The Client agrees to recognize the legality of the Company's copyright and proprietary, and agrees in good faith to secure the Company's right to the copyright and proprietary.

9.5 The Client agrees that at the conclusion of the agreement, the Client will continue to protect the Company's copyright and proprietary property.

9.6 The Client agrees to retain in confidence all information, ideas and concepts imparted to them by the Company concerning the Software Product.

9.7 The Client shall have, for the jurisdiction's use, unlimited access to the use of the object program code provided by the Company during the term of this agreement, that both the source and object code shall be kept on the Client's computer and shall be available for audit and inspection by the proper authorities, but that the Company shall retain the exclusive ownership and prohibit its release to or inspection by anyone without the advance written permission of the Company.

10. WARRANTIES

10.1 The Company warrants that the Software Product shall perform as per this agreement with respect to updates, and enhancements as long as the Client continues with a maintenance agreement with the Company.

10.2 During the maintenance period, the Company shall deliver any updates to the Software Product which affects the performance of the Software Product.

10.3 The Company shall only be responsible to correct defects that are documented and submitted in writing during the maintenance agreement

period. Oral notification or other unwritten complaints will not constitute notice under this agreement.

10.4   At any time during the period of this agreement the Company shall not be required to correct any defects in any of the Software Product caused by the Client's negligence, improper installation or operation of the Software Product, or other improper action. Should the Client fail to install any updates supplied by the Company, the warranty and the Company's obligation shall immediately terminate as regards the functions affected by said updates.

10.5   The warranties specified herein do not cover damage, defect, malfunctions or failure caused by

10.5(A) Failure by the Client to follow Company's and manufacturer's installation, operation, or maintenance instructions or its failure to fulfill its obligations under this agreement.
10.5(B) The Client's modification or relocation of the Software Product.
10.5(C) The Client's abuse, misuse or negligent acts
10.5(D) Power failure or surges, lightning, fire, flood, accident, actions of third parties or other events, outside the Company's reasonable control.
10.5(E) Failure of the Client to provide an operating environment for the Software Product, including electrical and telecommunication connections

10.6   The Company shall have no liability under the warranty except the correction or avoidance of defects as specified herein. The warranties set forth in this paragraph are in lieu of all other representations and warranties relating to the Software Product, expressed or implied, including warranties or title, operation, merchantability or fitness for a particular purpose and any other statutory or common law warranty. The Company expressly disclaims and excludes any such other representations and warranties, correction or defects by the Company in the manner provided herein shall constitute fulfillment of all liabilities to the jurisdiction in respect of any defects in the software, whether based on contract, negligence, strict liability in tort, or any other legal or equitable theory. In no event shall the Company be liable for incidental, consequential, loss of business, special or indirect damages or any nature whatsoever. Regardless of any provisions herein contained to the contrary, the Company warrants and guarantees the title non-transferable and non-exclusive license to use its proprietary software, furnished by the Company to the Client under the terms hereof, and warrants that it is capable and sufficient to accomplish the tasks for which it is supplied.

10.7 To the maximum extent permitted by applicable law, in no event shall the Company be liable for special incidental, punitive, indirect or consequential damages whatsoever, arising out of or in any way related to the use of the Software Product.

10.8 Notwithstanding any damages that the Client might incur for any reason whatsoever, the entire liability of the Company shall not exceed the lesser of the actual damages incurred or the amount actually paid for the Software Product.

11. LEGAL RESTRAINTS AND LIMITATIONS

11.1 The Company acknowledges that the Client, as a unit of local government and a political subdivision of the State of Indiana, is subject to restraints, limitations, regulations, and controls imposed or administered pursuant to numerous applicable laws, ordinances, rules and regulations of federal, state, regional and certain local governmental agencies or authorities. The Company agrees that all professional services rendered or performed by the Company pursuant to the provisions of the agreement shall be in compliance therewith.

12. GOVERNING LAW

12.1 This agreement shall be governed by and construed under the laws of the State of Indiana.

13. AUTHORITY TO EXECUTE

13.1 Each of the parties hereto covenants to the other party that it has lawful authority to enter into this agreement, that the governing or managing body of each of these parties has approved this agreement and that the governing or managing body of each of the parties has authorized the execution of this agreement in the manner hereinafter set forth.

14. SEVERABILITY

14.1 If any provision of this agreement is held to be invalid or otherwise unenforceable, the forcibility of the remaining provisions shall not be impaired thereby.

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15.   NO WAIVER

15.1   The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

16.   NOTICES

16.1   All notices required or permitted under this agreement shall be in writing and sent by certified mail, return receipt requested with property postage affixed, to the parties at their designated address.

17.   NON-SOLICITATION

17.1   During the period of this agreement, and for a period of twelve (12) months following the project's completion date, the Client will not solicit for employment nor hire any Company employee without the express written consent of the Company.

18.   MAINTENANCE AND UPGRADES

18.1   The Company reserves the right to conduct on-site reviews at the Client's site to insure that the Client is in compliance with the terms and conditions of this agreement.

18.2   The Client shall designate a primary person responsible for the installation and general coordination of computerized data processing activities. This person shall be expected to undertake the mastery of the technical aspects of the operation of the computer. This person shall work closely with the Company programmers to ensure coordinated overall operations, solution of operation problems, frequent and complete backup of all data files and other functions as may be deemed necessary for the overall efficient operation of the Software Product.

18.3   The Company shall support the Software Product based on the current hardware in use by the Client. Any change in the configuration of the hardware may result in a change in support fees.

18.4   The Client shall not modify the Software Product without the prior written consent of the Company.

18.5   The Client shall not transfer the Software Product to any other computer, except for backup purposes, without the written consent of the Company.

18.6 The support provided by the Company does not include any data conversions, or software development services.

18.7 The Client and the Company agree that the Company does not sell or service the required computer hardware and system software.

18.8 The Company shall not be required to correct any defects in any of the Software Product caused by the Client's negligence, improper installation or operation of the Software Product.

18.9 The Company shall only support a Software Product version that is no more than one version prior to the current version of the Software Product.

18.10 For further clarification see Exhibit B – Services to be Performed.

19. TELEPHONE SUPPORT

19.1 The Company shall during normal business hours render telephone support to the Client for consultation on the operation and utilization of the Software Product. Normal business hours consist of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Company holidays.

19.2 The Client shall be responsible for all telephone communication and equipment charges related to the telephone support.

20. REPORTING AND CORRECTING ANY INACCURACY

20.1 The Client shall notify the Company in writing of any inaccuracy in the Software Product.

20.2 The Company shall verify any inaccuracy reported by the Client.

20.3 When a problem is reported, the Company shall make every reasonable attempt to solve it as soon as possible using the following schedule.

Severity	Client	Debility	Workaround	Correction
1	Down	High	No	1 business days
2	Up	High	No	3 business days
3	Up	High/ Medium	Yes	10 business days
4	Up	Low	Yes	Future release

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20.4 Modification requests shall be considered for future releases, but at the discretion of the Company. The Client may contract with the Company to add modifications to the Software Product at the Company's current prevailing rates.

20.5 The Company shall notify the Client if no inaccuracy was found to exist.

21. TERMINATION OF AGREEMENT

21.1 The Client or the Company has the right to terminate the agreement if either party has materially breached any obligation herein, or such breach remains uncured for a period of one hundred twenty (120) days after written notice thereof has been sent to the other party.

21.2 The Client shall pay for services rendered prior to notification of termination and for work performed during the termination notice period.

21.3 Upon termination of the agreement, the Client shall promptly return to the Company any Software Product, materials and other property of the Company held by the Client.

21.4 Upon termination of the agreement, the Company shall promptly return to the Client any property of the Client held by the Company.

21.5 The Company agrees that the data is the property of the Client.

22. CLIENT SOFTWARE PROVIDER REQUIREMENTS

22.1 The Company shall ensure that the software provider requirements set forth in 50 Indiana Administrative Code (IAC) 12-12-1 are satisfied. These include, but are not limited to, the following:

22.1(A) The software maintenance agreement between the Client and the Company shall comply with the standards set forth in 50 IAC 12 as modified by the State Board of Tax Commissioners Non-Rule Policy Statement regarding county computer system certification.

22.1(B) The Company shall provide assistance to the Client as may be required to modify the Software Product to comply with changes in the laws, Department of Local Government Finance and Legislative Services Agency rules, or policy statements within the time prior prescribed by the law, rule or Department, provided the Company is compensated equitably, based on common industry rates, as are reasonably agreed to by the parties.

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22.1(C) The Company agrees to reimburse the Licensee for all costs incurred as a result of the vendor's failure to continue to support the assessment software during the life of the maintenance agreement.

22.1(D) In the event a dispute arises concerning the Company's ability to provide continued support and the Department, an arbitrator, or court rules that the Company has ceased to provide continued support and that the vendor is incapable of resuming support, the Client agrees that its documentation and source code may be released to the county.

IN WITNESS WHEREOF, the Blackford Commissioners representing the Blackford County Assessor, acting in behalf of said County, and an authorized representative of the Appraisal Research Corporation have signed this contract on the day and year first above written.
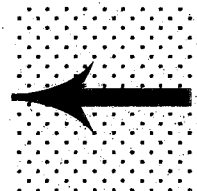
BLACKFORD COUNTY, INDIANA

_____
Commissioner

12/20/04
Date

_____
Commissioner

12/20/04
Date

_____
Commissioner

12/20/04
Date

ATTEST

_____
Blackford County Auditor

12/20/04
Date

APPRAISAL RESEARCH CORPORATION

_____
Richard H. Hoffman, ASA, CAE, MAI
President & CEO

_____
Date

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EXHIBIT A
COMPANY'S SOFTWARE PRODUCT

The following Company's Software Product has been implemented by the Client.

A.   Computer Assisted Mass Appraisal (CAMA) system for residential, agricultural, commercial, industrial and exempt classes of property.

B.   Support includes up to four (4) computers (CPU units). Support for additional computers will require the Client to purchase additional license agreements and support at the Company's current prevailing rate.

EXHIBIT B
SERVICES TO BE PERFORMED

A. The maintenance of the computer assisted mass appraisal application Software Product currently installed.

B. Update of the computer assisted mass appraisal system as may be required from time to time to comply with modifications or changes in Indiana Law or Administrative Rules.

C. The enhancement of the Software Product as may be requested by the Client from time to time and as circumstances permit. Such enhancements shall be at the sole discretion of the Company and shall be general enhancements for the use of all or the majority of the Company's clients.

D. If the Client desires the Company to make specific modifications to the Software Product, the Company shall charge the prevailing rates of the Company.

E. The Client shall be responsible for notifying the Company of changes to the installed hardware, so the Company may make appropriate changes in the Software Product for maximum effectiveness.

F. The Client shall be responsible for providing dial-up and/or network access to the jurisdiction's computer so the Company may utilize telephone support through remote access programs.

G. The Company shall provide technical assistance for resolving problems associated with the computer assisted mass appraisal system. This assistance shall include error resolution, and assistance in the determination of the source of any problem, whether user error or system software error, and a recommendation for appropriate corrective action. Should the problem involve a Software Product error, the Client will not be charged for the determination or correction of the error. If, however, the error is a user error which persists upon normal instruction, and suggestions for modification, then the Client and the Company shall discuss appropriate charges.

H. The Company shall respond to the Client's request for telephone assistance within twenty-four (24) hours or less.

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EXHIBIT C
STATEMENT OF FEES

APPRAISAL RESEARCH CORPORATION
October 1 2004

A.	Senior Designated Appraiser	$75.00 per hour
B.	Designed Appraiser	$62.50 per hour
C.	Senior Level II Assessor	$50.00 per hour
D.	Level II Assessor	$37.50 per hour
E.	Computer Analyst	$50.00 per hour
F.	Real Estate Information Specialist	$37.50 per hour
G.	Data Entry Supervisor	$30.00 per hour
H.	Clerical Support Personnel	$15.00 per hour

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